IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.2645 OF 2005

Ravindra M. Shetty & anr. ...Applicants
vs.
State of Maharashtra ...Respondent

WITH
CRIMINAL APPLICATION NO.2941 OF 2005

Yathiraj D. Salian ...Petitioner
vs.
State of Maharashtra ...Respondent

Mr.A.S.Khandeparkar i/b Khandeparkar And Associates for the Applicants.
Mr.A.S.Gadkari,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : JULY 1,2005.

P.C.:

1. These are the Applications filed for grant of anticipatory bail by the accused in C.R.No. I-65/2005 registered at Mahatma Phule Police Station, Kalyan for the offence punishable under Sections 406,409, 467, 468 of the Indian Penal Code read with Section 3 and 4 of M.P.I.D. Act. The offence relates to misappropriation of the amount invested by the investors with Shri Mahadevi Sahakari Credit Society Ltd. which is a credit society. The Applicants No.1 in Application No.2645 of 2005 is allegedly the secretary and the Applicant No.2 is the Joint Secretary of the said society. The Applicant in Application No.2941 of 2005 is allegedly the Vice Chairman of the said society. F.I.R. has been filed by the Special Auditor of the of Cooperative Societies,Thane. The allegation in the F.I.R. is that the Office Bearers of the

credit society collected a sum of Rs.1,18,79,500/- from the investors and they have misappropriated the said amount. The allegation is regarding fabrication of various documents viz. profit and loss accounts, Balance sheet etc.

2. The learned Counsel for the Applicants in Criminal Application No.2645 of 2005 submitted that the Applicants complained with the authorities regarding alleged misappropriation. The case of the Applicants is that they had submitted their resignation as Office Bearers of the said credit society. The case of the Applicants is that they are gainfully employed. The case of the Applicants No.2 in Criminal Application No.2645 is that he is also gainfully employed as Deputy Manager of the Manglore Refineries and Petrochemicals Ltd. and since 1995 he has been posted at Manglore.

3. The Counsel appearing for the Applicants placed reliance on order dated 21st April 2005 passed by the learned II Additional Sessions Judge on the application for anticipatory bail made by the Chairman and Treasurer of the credit society. The Applicants have also placed on record certified copy of the undertaking given by the Chairman and Treasurer in the said Application. In the said undertaking it is recorded that the said Applicants have arranged for repayment of the amount to the depositors to the extent of Rs.1,08,00,000/-. The said undertaking records thus :

"The Applicants are therefore voluntarily giving this undertaking that they are ready to arrange for the repayment of the remaining amount on getting the necessary verification from depositors. This undertaking is submitted as held in discussion at the time of hearing of bail application. The applicants therefore hereby undertake to make repayment of the remaining amount to depositors."

4. The Chairman and the Treasurer who are the Applicants in the said Application were enlarged on anticipatory bail. While granting them the relief, the learned Additional Sessions Judge recorded that a sum of Rs.1,08,00,000/- has been repaid to the various depositors. The learned Judge recorded a submission which was recorded in the report of the Investigating Officer that the total amount involved is to the tune of Rs.1,18,79,500/-. In paragraph No.3 the learned Judge observed thus :

"It may be noted here that the custody of the applicants was asked by the I.O. as per his report for the purpose of recovery of amount and to ask the explanation in respect of the manipulation of the record. at the time of submission the learned A.P.P. also submitted that as the amount of Rs.1,80,00,000/- is already refunded by the applicant to various depositors and the affidavits are filed on record. Hence, the custody of the applicants is not necessary for the

recovery of the amount."

5. The learned Judge also noted that an Administrator has been appointed to administer the said credit society. In view of the stand taken by the Public Prosecutor and in view of the payment of substantial amount, the learned Judge granted relief in favour of the Chairman and the Treasurer.

6. The learned A.P.P. submitted that the custodial interrogation of the Applicants will be necessary as the total amount involved is about 1,36,00,000/- lakhs. On instructions he did not dispute that further amount of Rs.5 lakhs has been paid to the investors over and above the sum of Rs.1,08,91,500/-.

7. F.I.R. discloses that the total misappropriation made by the Office Bearers of the credit society is Rs.1,18,79,500/-. It is now an admitted position that a sum of Rs.1,13,000/- has been repaid to the investors.

8. The Applicants in these applications are gainfully employed. The stand taken by the Applicants in the first Application No.2645 of 2005 is that in fact they had complained about the misappropriation and they have submitted their resignation on 7th April 2002. The learned Additional Sessions Judge found on the basis of the stand taken by the Investigating Officer that the custodial interrogation of the

Chairman and the Treasurer was not necessary. Therefore, there is no reason why the relief should be denied to the Applicants. A substantial amount has been repaid to the investors and the record of the society is in possession of the Administrator are the factors which are required to be considered.

9. Hence I pass the following order :

i) In the event of the arrest of the Applicants in connection with C.R.No.I-65 of 2005 registered with Mahatma Phule Police Station,Kalyan, District Thane the Applicants shall be enlarged on bail subject to furnishing P.R.Bond in the sum of Rs.20,000/- (Rupees twenty thousand only) with one or two sureties in the like amount.

ii) The Bail is granted subject to condition that the Applicants will attend the concerned Police Station once in a week.

iii) The Bail is granted subject to condition that the Applicants shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the Police Officer/investigating agency. The Applicants shall not tamper with the prosecution evidence.

iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

v) This order will enure to the benefit of the Applicants only till charge sheet is filed. Thereafter, they will be free to apply to the appropriate Court for appropriate relief.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

JUDGE